

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Mirant Las Vegas, LLC

Docket Nos. TX03-1-000
TX03-1-001
TX03-1-002
TX03-1-003
TX03-1-004
ER02-1741-000
ER02-1741-001
ER02-1741-002
ER02-1741-003
ER02-1741-004
ER02-1742-000
ER02-1742-001
ER02-1742-002
ER02-1742-003
ER02-1742-004

Valley Electric Association, Inc.

ER04-424-002

ORDER GRANTING REHEARING, DENYING REQUEST FOR
INTERCONNECTION, CONSOLIDATING PROCEEDINGS,
AND RETURNING PROCEEDINGS TO SETTLEMENT
JUDGE

(Issued October 8, 2004)

1. This order grants rehearing of an order issued in these proceedings on February 17, 2004,¹ which found that changing circumstances overtook a request that the Commission order interconnection under section 210 of the Federal Power Act (FPA).²

¹ *Mirant Las Vegas, et al.*, 106 FERC ¶ 61,156 (2004) (February 17 Order).

² 16 U.S.C. § 824i (2000).

In addition, we deny the request in Docket No. TX03-1-000 for an interconnection pursuant to section 210 of the FPA. We also consolidate the ongoing proceeding in Docket No. ER04-424-002 with the ongoing proceedings in Docket Nos. ER02-1741 and ER02-1742 concerning the appropriate cost allocation for upgrades at the McCullough Substation, and return the consolidated proceedings to the settlement judge. This order benefits customers by promoting efficient resolution of the remaining matters at issue.

Background

2. The McCullough Substation is located in southern Nevada. It consists of two switchyards, the McCullough 500-kV Switchyard and the McCullough 230-kV Switchyard. The Los Angeles Department of Water Power (LADWP), Nevada Power Company (Nevada Power), the Salt River Project Agricultural Improvement and Power District (Salt River), and the United States Department of the Interior, Bureau of Reclamation (Bureau of Reclamation) (collectively, McCullough Owners) are co-owners of the McCullough Substation. LADWP is the operating agent for the McCullough Substation.
3. Mirant Las Vegas LLC (Mirant Las Vegas), Duke Energy Moapa, LLC (Duke Energy), Gen West, LLC (Gen West), Las Vegas Cogeneration II, LLC (Las Vegas Cogen), and Reliant Energy Bighorn (Reliant Energy) (collectively, Applicants) own or are developing generation facilities in southern Nevada that interconnect or will interconnect with Nevada Power's transmission system.
4. Nevada Power's transmission system is connected with the McCullough Substation, and Applicants' interconnections to Nevada Power's transmission system have necessitated upgrades to the McCullough 500-kV Switchyard. Nevada Power funded these upgrades and collected those funds from Applicants. Nevada Power is also obligated to fund upgrades to the McCullough 230 kV Switchyard when they become necessary because of interconnections with its transmission system, including the Ivanpah Project that Diamond Generating Corporation (Diamond) is developing near Pahrump, Nevada.
5. The electrical consequences of the interconnected grid in the Western Interconnection are such that an interconnection with any one system cannot be accomplished without the cooperation of other systems in the region. Accordingly, Nevada Power convened a Short Circuit Working Group (Working Group) that consisted of Applicants, Diamond, interconnected utilities in the region (including LADWP), and other facilities developers in the region. On September 4, 2001, the Working Group issued a Short Circuit Working Group Fault Duty Analysis (Short Circuit Analysis),

which considered Applicants and Diamond a cluster, and argued that, but for Diamond's interconnection, there would be no need for upgrades at the McCullough 230 kV Switchyard.³

Proceedings at Issue Here

6. Nevada Power has an agreement with LADWP (the McCullough Letter Agreement) that obligates Nevada Power to fund upgrades to the McCullough Substation which become necessary because of the interconnection of new facilities to the Nevada Power transmission system. Each Applicant has agreed, through a Memorandum of Understanding (MOU) between itself and Nevada Power, filed with the Commission on May 6, 2002 in Docket Nos. ER02-1741-000 and ER02-1742-000, to pay its share of Nevada Power's costs of the McCullough upgrades, if any, made necessary by its interconnection with the Nevada Power transmission system.

7. On July 5, 2002, the Commission accepted the filings in Docket No. ER02-1741-000 and ER02-1742-000, suspended them, established settlement judge and hearing procedures, and consolidated them.⁴

8. On March 17, 2003, as amended on April 7, 2003, in Docket No. TX03-1-000, Applicants filed an application under sections 210 and 212⁵ of the FPA, requesting that the Commission direct the McCullough Owners to: (a) release Nevada Power from financial responsibility for upgrades to the McCullough 230-kV Switchyard; and (b) provide Applicants with transmission credits, with interest or other compensation, for the upgrades that the Applicants have funded for the McCullough 500-kV Switching Station. Applicants also requested consolidation with Docket Nos. ER02-1741-000 and ER02-1742-000, which were then in settlement judge procedures.

³ The Working Group Study was updated on August, 2002 and did not change its conclusion.

⁴ *Nevada Power Company*, 100 FERC ¶ 61,037 at P 1-3, 12-15 (2002). On September 17, 2002, the Commission consolidated Docket No. ER02-2344-000 with this proceeding. *Southern California Edison Co.*, 100 FERC ¶ 61, 272 (2002). However, the parties subsequently settled all issues in that docket. *Southern California Edison Co.*, 103 FERC ¶ 61, 050 (2003).

⁵ 16 U.S.C. § 824k (2000).

9. On March 19, 2003, the settlement judge in Docket Nos. ER02-1741-000 and ER02-1742-000 issued a report stating that, as requested by the parties, he was holding the settlement proceedings in abeyance pending Commission action in Docket No. TX03-1-000.

10. On September 12, 2003, in Docket Nos. TX03-1-000, TX03-1-001, ER02-1741-000, and ER02-1742-000, the Commission issued an order directing the Applicants and other parties to supply further information about the status of their projects. The Commission noted that the central issue in the proceedings was whether or not to continue to group all of the projects together for study and cost allocation purposes.⁶

11. On November 10 and November 12, 2003, Applicants and the McCullough Owners filed responses. Diamond filed an answer to Applicants' responses; Duke Energy, Gen West, and Mirant filed answers to Diamond's answer; and Diamond filed an answer to their answers.

12. Relying on those answers, the Commission issued the February 17 Order. As noted above, the Commission found that changing circumstances had overtaken the Applicants' interconnection request, *i.e.*, that Duke Energy had decided to put the Duke Moapa project on hold indefinitely, such that there was no longer a need for the transmission upgrades on which the parties premised their request. If there were any unresolved issues remaining, the parties were given 30 days to so inform the Commission.⁷ In addition, the Commission granted Salt River's request for rehearing of the September 12 Order, contending that, because Salt River has no real ownership interest in the McCullough 500 kV Switchyard and does not operate or control the Switchyard, but rather merely holds title for the use and benefit of the Bureau of Reclamation, the proceeding should be dismissed with regard to Salt River.⁸

13. On March 18, 2004, as amended on January 23, 2004, requests for clarification and/or rehearing of the February 17 Order were filed by Nevada Power, Duke Energy, Gen West, Las Vegas Cogen, and Mirant and Reliant (jointly). They all stated that the dispute had not been resolved to their satisfaction, and that they did not wish the Commission to dismiss the proceedings. On March 29, 2004, Diamond filed an answer to Mirant and Reliant's pleading, disputing their claims of ambiguity.

⁶ *Mirant Las Vegas, et al.*, 104 FERC ¶ 61,275 (2003) (September 12 Order).

⁷ February 17 Order at P 25-28.

⁸ *Id.* at P 32.

14. Separately, on January 16, 2004, as amended on January 23, 2004, in Docket Nos. ER04-424-000 and ER04-424-001, Valley Electric Association, Inc. (Valley Electric) filed an interconnection agreement (Valley Electric IA) with Ivanpah Energy Center, LP for Diamond's Ivanpah Project. On March 23, 2004, the Commission accepted the Valley Electric IA for filing, but directed Valley Electric to file a status report within 30 days "to ensure that Valley Electric will negotiate with affected third party systems in a timely fashion" regarding the funding of "upgrades necessary to resolve reliability problems on affected third party systems."⁹

15. On April 22, 2004, Valley Electric filed a status report. However, the filing did not comply with the March 23 Order, and, on June 4, 2004, in an unpublished, delegated letter order Valley Electric was directed to file a status report indicating whether Valley Electric has entered or is planning to enter into negotiations with LADWP regarding Diamond's impact on the McCullough Substation. On June 14, 2004, Valley Electric filed a revised status report.

16. On June 29, 2004, GenWest filed a protest to the revised status report, requesting that the Commission direct Valley Electric to immediately communicate with LADWP to provide for Valley Electric and/or Diamond to pay an appropriate share of the fault duty mitigation costs at the McCullough Substation. On July 9, 2004, Valley Electric filed an answer, stating that it "has at all times been willing to participate in any negotiations concerning the upgrades required in the region to accommodate the interconnection of the various generating plants in the region." However, Valley Electric notes that "other proceedings have been established under which the . . . cost allocations have been, are being and will be discussed. Until now, no one has suggested that Valley [Electric] needed to be part of the negotiations concerning McCullough."¹⁰

Discussion

Requests for Rehearing

17. We will grant the requests for rehearing of the February 17 Order filed by Nevada Power, Duke Energy, Gen West, Las Vegas Cogen, and Mirant and Reliant. It is apparent from their pleadings and from Diamond's March 29 answer that the facts are no longer as they had been presented to us in response to the September 12 Order. In

⁹ *Valley Electric Association, Inc.*, 106 FERC ¶ 61,266 at P 16, 15 (2004) (March 23 Order).

¹⁰ Valley Electric July 9 Answer at 2, 3.

particular, we note that it now appears that the Duke Moapa project is not on hold indefinitely, but rather will become operational by the summer of 2006.¹¹ Accordingly, we agree that the dispute has not been resolved to Applicants' satisfaction.

Docket No. TX03-1

18. Because the dispute has not been resolved, we now address the merits of the application in Docket No. TX03-1-000, and will deny Applicants' request for an order under sections 210 and 212 of the FPA. Section 210 of the FPA provides, in relevant part:

(a)(1) Upon application of any electric utility, . . . the Commission may issue an order requiring –

(A) the physical connection of . . . the transmission facilities of any electric utility, with the facilities of such applicant.

(B) such action as may be necessary to make effective any physical connection described in subparagraph (A), which physical connection is ineffective for any reason, such as inadequate size, poor maintenance, or physical unreliability.

(C) such sale or exchange of electric energy or other coordination, as may be necessary to carry out the purposes of any order under subparagraphs (A) or (B), or

(D) such increase in transmission capacity as may be necessary to carry out the purposes of any order under subparagraphs (A) or (B).

¹¹ See Attachment 1 to GenWest June 29, 2004 Protest, Docket No. ER04-424-002 (Nevada Power Press Release of June 23, 2004).

19. Applicants here are not requesting the physical interconnection of facilities.¹² Rather, as noted above, Applicants ask that the Commission direct the McCullough Owners to: (1) release Nevada Power from its obligation to fund upgrades to the McCullough 230 kV Switchyard, so that Nevada Power can, in turn, release them from their obligation to reimburse Nevada Power for those upgrades,¹³ and (2) provide them with transmission credits for already-funded upgrades.¹⁴ These requests are in reality challenges to the McCullough Letter Agreement between Nevada Power and LADWP, an agreement to which Applicants are not parties;¹⁵ neither request has anything to do with an order requiring a physical interconnection at the McCullough Substation.¹⁶

20. Indeed, Applicants physically interconnect or plan to physically interconnect only with Nevada Power; they have no physical interconnection with the McCullough Substation and they are not requesting a physical interconnection with that Substation.

¹²The Commission's section 210 orders have all involved the physical interconnection of facilities. *See, e.g., City of Corona, California v. Southern California Edison Company*, 101 FERC ¶ 61,240 at 62,023-28 (2002) (order directing physical interconnection); *Kiowa Power Partners, et al.*, 99 FERC ¶ 61,251 at 62,092-93 (2002) (same); *Sierra Pacific Power Company*, 89 FERC ¶ 61,234 at 61,691-93 (1999) (same); *Illinois Municipal Electric Agency v. Illinois Power Company*, 86 FERC ¶ 61,045 at 61,174, 61,177 (1999) (same); *Laguna Irrigation District*, 84 FERC ¶ 61,226 at 62,086-89 (1998), *reh'g dismissed*, 85 FERC ¶ 61,220 (1999) *final order sub nom, Pacific Gas and Electric Company*, 88 FERC ¶ 61,164 (same), *order on reh'g*, 91 FERC ¶ 61,340 (2000), *order denying rehearing and granting and denying clarification*, 95 FERC ¶ 61,305 (2001) (*Laguna*) (same). *See also Pacific Gas and Electric Company and Fresno Irrigation District*, 88 FERC ¶ 61,231 at 61,761-63 (1999) (same). Here, Applicants are or will be receiving transmission service under Nevada Power's Open Access Transmission Tariff (OATT). They are not here seeking transmission service from the McCullough Owners. *See Laguna*, 91 FERC at 62,153-54.

¹³ *See* Application at 2, 12.

¹⁴ *See id.* at 2, 10.

¹⁵ Applicants' challenges to the MOUs, to which they are parties, are appropriately raised in Docket Nos. ER02-1741 and ER02-1742. However, that proceeding also would not be an appropriate forum in which to challenge the McCullough Letter Agreement.

¹⁶ In fact, far from requesting that we direct an interconnection, Applicants are concerned about upgrades that they claim "are *not necessary* for the safe and effective interconnection of the Applicants to Nevada Power's transmission system." *Id.* at 10 (emphasis in original).

Nor do any of the other provisions of section 210 provide for the relief Applicants are seeking. They do not allege that their physical interconnections with Nevada Power are in any way ineffective (because of, *e.g.*, inadequate size, poor maintenance, or physical unreliability) (section 210(a)(1)(B)). And the provisions of sections 210(a)(1)(C) and (D), directing sale or exchange of electric energy or coordination, and directing an increase in transmission capacity, are both predicated on the necessity “to carry out the purposes of any order under [sections 210(a)(1)(A) or (B)].”

21. Accordingly, we will deny the Application in Docket No. TX03-1.

Docket Nos. ER02-1741, ER02-1742, and ER04-424

22. Our resolution of the proceeding in Docket No. TX03-1 should obviate the need to continue to hold the settlement proceedings in abeyance.¹⁷ Additionally, we will consolidate the proceeding in Docket No. ER04-424 with the proceedings in Docket Nos. ER02-1741 and ER02-1742. As noted above, Valley Electric states that it “has at all times been willing to participate in any negotiations concerning the upgrades,”¹⁸ and we think its participation, on behalf of Diamond, would be beneficial to determine the appropriate allocation of costs of the upgrades to the McCullough Substation for the cluster of the generating facilities of Applicants and Diamond.

The Commission orders:

(A) The requests for rehearing in Docket No. TX03-1-004 are hereby granted.

(B) The application for an interconnection order in Docket No. TX03-1 is hereby denied.

(C) Docket No. ER04-424 is hereby consolidated with the ongoing proceedings in Docket Nos. ER02-1741 and ER02-1742 for purposes of settlement.

¹⁷ See Reports by the settlement judge of March 19, 2003, April 21, 2003, and May 21, 2003.

¹⁸ Valley Electric July 9 Answer at 2.

(D) The settlement judge designated in Docket Nos. ER02-1741 and ER02-1742 shall determine the procedures best suited to accommodate the consolidation of Docket No. ER04-424 with those proceedings.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.